

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JUDY KIRKBRIDE, PATRICA BERGER,) Case No. 2:21-cv-00022-ALM-EPD
MELODY MACKERT and BEETA LEWIS,)
individually and on behalf of all others) Chief Judge Alegenon L. Marbley
similarly situated,) Magistrate Judge Elizabeth Deavers
)
Plaintiffs,)
)
vs.)
)
THE KROGER CO.,)
)
Defendant.)

**PLAINTIFFS' RENEWED MOTION
TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES**

On July 26, 2022, Plaintiffs filed their Motion to Strike Defendant's Affirmative Defenses, which has been fully briefed by the parties but not yet decided. Dkt. Nos. 45, 48-49. On January 23, 2023, Defendant filed an Amended Answer, but did not amend its affirmative defenses. Dkt. No. 55. To account for the possibility that the filing of Defendant's Amended Answer moots Plaintiffs' pending Motion to Strike, notwithstanding the lack of amendments to the affirmative defenses, Plaintiff renews the Motion to Strike as to the affirmative defenses alleged in Amended Complaint. All of the arguments made in the prior briefing apply equally to the affirmative defenses alleged in the Amended Complaint, and Plaintiffs incorporate those arguments with respect to this renewed motion. Therefore, for the reasons set forth in the previously filed memorandum and reply brief (Dkt. Nos. 45, 49), Plaintiffs move, pursuant to Fed. R. Civ. P. 12(f), to strike from Defendant's Amended Answer, Affirmative Defense Nos. 1-8 and 10, as well as footnote 2 purporting to reserve additional defenses.

Respectfully submitted,

Dated: January 24, 2023

/s/ Scott D. Simpkins

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CERTIFICATE OF SERVICE

This certifies that all counsel of record were served via the Electronic Case Filing (“ECF”) System on January 24, 2023.

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